

State of Utah
Administrative Rule Analysis
Revised December 2019

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	R414-307	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):		

Agency Information

1. Department:	Department of Health	
Agency:	Division of Medicaid and Health Financing	
Room no.:		
Building:	Cannon Health Building	
Street address:	288 North 1460 West	
City, state:		
Mailing address:	PO Box 143102	
City, state, zip:	Salt Lake City, UT, 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	(801) 538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
Eligibility for Home and Community-Based Services Waivers
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The purpose of this change is to implement the new Community Transitions Waiver (CTW), in accordance with Section 1915(c) Home and Community Based Services Waivers.
4. Summary of the new rule or change:
This amendment implements the new CTW group, sets forth provisions for eligibility, spells out agency procedures, and makes other technical changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is an anticipated cost of about \$24,771,000 to the state budget.
B) Local governments:
There is no impact on local governments because they neither fund nor provide services under the CTW.
C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses that provide Home and Community-Based Services (HCBS) may see a share in revenue based on the total amount of \$24,771,000. Conversely, small businesses that own intermediate care facilities (ICFs) will see a decrease in revenue based on that amount as individuals move out of ICFs into HCBS.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses that provide HCBS may see a share in revenue based on the total amount of \$24,771,000. Conversely, non-small businesses that own ICFs may see a decrease in revenue based on that amount as individuals move out of ICFs into HCBS.

E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Medicaid providers of HCBS may see a share in revenue based on the total amount of \$24,771,000. Conversely, Medicaid providers in ICFs may see a decrease in revenue based on that amount as individuals move out of ICFs into HCBS. Medicaid members who qualify for the CTW may see out-of-pocket savings.

F) Compliance costs for affected persons:

A single ICF may see a decrease in revenue based on the total amount of \$24,771,000 as individuals move into HCBS.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$24,771,000	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$24,771,000	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$7,431,300	\$0
Non-Small Businesses	\$0	\$8,669,850	\$0
Other Persons	\$0	\$8,669,850	\$0
Total Fiscal Benefits	\$0	\$24,771,000	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Joseph K. Miner, M.D., has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Some businesses may see a share in revenue as more individuals access HCBS, while other businesses may see a decrease in revenue as individuals move from ICFs into HCBS.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, M.D., Executive Director

Citation Information**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 26-1-5	Section 26-18-3	Pub L. No. 111-148
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	

Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy):		03/16/2020
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy):	03/23/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title:	Joseph K. Miner, M.D., Executive Director	Date (mm/dd/yyyy):	01/22/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-307. Eligibility for Home and Community-Based Services Waivers.

R414-307-5. Medically Needy Waiver Group.

The following sets forth financial eligibility requirements for the medically needy coverage group, and applies to individuals seeking Medicaid coverage for HCBS under the New Choices Waiver, Community Transitions Waiver, or the Individuals with Physical Disabilities Waiver.

(1) If an individual's spouse meets the definition of a community spouse, the eligibility agency shall apply the resource provisions defined in 42 U.S.C. 1396r-5, ~~[Section 1924 of the Social Security Act and]~~ Section R414-305-3, and Section R414-305-4.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the eligibility agency shall count one-half of jointly[-] held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The eligibility agency may only count income of the individual determined under the most closely associated cash assistance program to decide eligibility for the medically needy waiver group. The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The eligibility agency shall count actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under 42 U.S.C. 1382(b)(1) ~~[Subsection 1611(b)(1) of the Social Security Act]~~.

(6) To determine eligibility for an individual, the eligibility agency shall apply the income deductions allowed by the community Medicaid category under which the individual qualifies.

(a) The eligibility agency shall compare countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual's medical expenses, including the cost of long-term care services, must exceed the spenddown amount.

To receive Medicaid eligibility, the individual must meet the monthly spenddown as defined in Subsection R414-304-11(9).

(b) The eligibility agency deducts medical expenses incurred by the individual in accordance with R414-304-11.

(7) The eligibility agency shall determine an individual's financial eligibility for the medically needy waiver group based on the level of care date on a valid waiver referral form as defined in Subsection R414-307-3(2). The eligibility agency shall determine eligibility for prior months using the community Medicaid or institutional Medicaid rules that apply to the individual's situation.

R414-307-14. Community Transitions Waiver.

(1) The Community Transitions Waiver is limited to individuals with intellectual disabilities and other related conditions who transition from an intermediate care facility for individuals with intellectual disabilities. An individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(2) An individual's resources must be equal to or less than \$2,000, however the spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-6 apply to this rule.

(3) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. The eligibility agency counts an individual's income except for income excluded under other federal laws to determine eligibility for federally funded, needs-based medical assistance. Eligibility is determined counting only the gross income of an individual.

(4) The eligibility agency counts a spouse's income only if an individual receives a cash contribution from the spouse.

(5) An individual whose income does not exceed 300% of the federal benefit rate may be required to pay a cost-of-care contribution. The following provisions apply to the determination of cost-of-care contribution.

(a) The eligibility agency counts an individual's income except for income excluded under other federal

laws to determine eligibility for federally funded, needs-based medical assistance.

(b) The eligibility agency deducts the maximum allowance available, which is a personal needs allowance equal to 300% of the federal benefit rate payable under 42 U.S.C. 1382(b)(1) for an individual with no income. No other income deductions are allowed.

(6) An individual whose income exceeds three times the federal benefit rate payable under 42 U.S.C. 1382(b)(1) may pay a spenddown to become eligible. To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind, or disabled individuals in Rule R414-304 apply except that income is not deemed from the individual's spouse.

(7) The provisions of Section R414-305-9 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

KEY: eligibility, waivers, special income group

Date of Enactment or Last Substantive Amendment: May 20, 2016

Notice of Continuation: March 29, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3